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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/590,746	08/25/2006	Giorgio Pozzato	1029.1037	1191
20311 7590 07/09/2008 LUCAS & MERCANTI, LLP 475 PARK AVENUE SOUTH 15TH FLOOR NEW YORK, NY 10016				
EXAMINER				
WEEKS, GLORIA R				
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07/09/2008		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary**Application No.**

10/590,746

Applicant(s)

POZZATO, GIORGIO

Examiner

GLORIA R. WEEKS

Art Unit

3721

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 09 April 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-16 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-14 is/are rejected.
- 7) ☒ Claim(s) 15 and 16 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/CDC)
- 4) ☐ Interview Summary (PTO-413)
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____
- Paper No(s)/Mail Date _____

DETAILED ACTION

1. This action is in response to the amendment and remarks received on April 9, 2008.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claim 13 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 13 recites the limitation "the pin" in line 1. There is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1, 3, 4, 6-10 and 14 are rejected under 35 U.S.C. 102(b) as being anticipated by Deng (USPN 6,076,720).

In reference to claims 1, 3, 4, 6, Deng discloses a stapler comprising two half-bodies (122) defining a main body which includes a seat (12) for a row of staples (40, 42) which are urged by a pusher (16, 17) toward an ejection head, wherein a striker (112) can run in a direction substantially perpendicular to the feed direction of the row of staples (40, 42) in the seat (12), characterized in that a mobile plate (30) having a notch (322) is mechanically connected to a

slider (24) which protrudes (248) outside the main body so that by moving the slider (24) the mobile plate (30) can slide parallel to the feed direction in the main body between the ejection head and the striker (112; figures 3 & 5).

In reference to claims 1, 7-10 and 14, Deng discloses a stapler comprising: two half-bodies (122) defining a main body which includes a seat (12) for a row of staples (40, 42) which are urged by a pusher (16, 17) toward an ejection head, wherein a striker (112) can run in a direction substantially perpendicular to the feed direction of the row of staples (40, 42) in the seat (12); characterized in that a mobile plate (24) mechanically connected to a slider (30), which protrudes outside the main body, such that movement of the slider (30) permits the mobile plate (24) to slide (figures 3 & 5), the slider (30) having two flexible arms (36) with teeth (31, 321); an pin expander (244) that vertically slides into an opening (322) in the central body of the slider (30) and across an opening in the middle of the slider (20); and a main body guide (122) having a cavities in which teeth (31) of the flexible arms (36) can hook.

6. Claims 1, 2, 4, 5 and 13 are rejected under 35 U.S.C. 102(b) as being anticipated by Nakamura (USPN 5,497,931).

Regarding claims 1, 2, 4, 5 and 13, Nakamura discloses a stapler comprising: a main body (14, 52, 53) having a vertical axis of symmetry that defines a first and second half of the main body, the body including a seat (100) for a row of staples (A) which are urged by a pusher (119) toward an ejection head (51), wherein a striker (32) can run in a direction substantially perpendicular to the feed direction of the row of staples (A) in the seat (100); and a mobile plate (67) having a hole (69) that permits mechanical connection by a pin (24) via a corresponding hole (56) in a slider (54) which protrudes (248) outside the main body (14, 52, 53) so that by

moving the slider (54) the mobile plate (67) can slide parallel to the feed direction in the main body (14, 52, 53) between the ejection head and the striker (32), wherein the pin (24) also crosses through the main body (figure 2); and a pin (22, 24; figure 7) connecting the mobile plate to the slider crosses an opening formed in opposing notches (unidentified) in the two halves of the main body.

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 11 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Deng (USPN 6,076,720) in view of Oide (USPN 4,556,161).

With respect to claims 11 and 12, Deng discloses stapler comprising a striker and mobile plate, but does not disclose the dimensions of the striker and mobile plate. Oide teaches a stapler having a striker (9), and a mobile plate (22) slidable with respect to a seat (3) of a main body of the stapler. It would have been obvious to one having ordinary skill in the art at the time of the invention to modify the striker to have the claimed thickness of .8 mm and a width of 10-12 mm, as well as a mobile plate having a thickness of less than .5 mm and a width of 9-12 mm, since column 3 line 66 – column 4 line 33 of Oide suggests that it is well known in the art to correspond the thickness and width of a striker and mobile plate to the largest thickness and width of staples to be driven from the stapler.

Allowable Subject Matter

9. Claims 15 and 16 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

10. The following is a statement of reasons for the indication of allowable subject matter in claims 15 and 16: Upon examination, the art considered as a whole, alone or in combination, neither anticipated nor renders obvious the claimed stapler having a slider that protrudes out of a main body of the stapler, the slider having a two flexible locking arms provided with teeth; an expander that slides in a vertical guide defined by the central body of the slider which is parallel to the sliding direction of the slider, such that the expander causes the flexible locking arms of the slider to expand outward and lock the teeth of the flexible arms with cavities provided in the guide; and further comprising two flexible arms on the body of the expander, the two flexible arms having teeth that also penetrate cavities provided in the guide, each pair of flexible arms provided for the purpose of locking the slider and the expander in respective positions.

The prior art is found to disclose either the expander having flexible arms or the slider having flexible arms; not both the expander and the slider having flexible arms.

Response to Arguments

11. Applicant's arguments filed April 9, 2008 have been fully considered but they are not persuasive.

During patent examination of the claims, the pending claims must be given their broadest reasonable interpretation consistent with the specification.¹ Moreover, while the claims of

¹ *Phillips v. AWH Corp.*, 415 F.3d 1303, 75 USPQ2d 1321 (Fed. Cir. 2005). *See also* MPEP § 2111.

issued patents are interpreted in light of the specification, prosecution history, prior art and other claims, *this is not the mode of claim interpretation to be applied during examination*. During examination, the claims must be interpreted as broadly as their terms reasonably allow.²

12. With respect to the rejection of claim 1 in view of Deng, Applicant has first argued that Deng fails to disclose a mobile plate that can “slide” from a rest position to an operative position. Examiner has interpreted the definition of the term slide to mean to move over a surface while maintaining smooth, continuous contact.³ As illustrated in figures 3 and 5 of Deng, plate 30 slides against a surface of slider 24, from a rest position to an operative positioned, while positioned within the main body of the stapler.

Applicant has further argued that Deng fails to teach or suggest a mobile plate that slides in a direction parallel run direction of the striker. As referenced above, figures 3 and 5 of Deng illustrate contact between the movable plate 30 and slider 24 as the plate 30 moves between the rest and operative positions. Figures 3 and 5 also illustrate the sliding movement to exist in a plane that is parallel to the plane in which striker 112 travels to eject a staple. Thus, Examiner maintains the rejection of Applicants invention, in view of Deng, as claimed.

13. Regarding the rejection of claim 1 in view of Nakamura, Applicant has argued that lock plate 67, as interpreted by Examiner, does not slide “between” the ejection head and the striker as claimed. Applicant has found that since the striker 32 of Nakamura extends above plate 67, the limitation of the plate 67 sliding between the striker 32 and the ejection head is not met. Examiner disagrees per the illustrations of figures 2 and 7 of Nakamura. Figure 7 points out a

² *In re Am. Acad. of Sci. Tech. Ctr.*, 367 F.3d 1359, 1369, 70 USPQ2d 1827, 1834 (Fed. Cir. 2004). See also MPEP § 2111.01.

³ American Heritage Dictionary

notch 33a defined by a lowermost extension portion of striker 32. Figure 2 shows a profile of the stapler disclosed by Nakamura, such that plate 67 is positioned between the lowermost portion of striker 32 and the ejection head⁴.

14. Applicant's arguments, see pages 5-6, filed April 9, 2008, with respect to the rejection of claim 3 in view of Nakamura have been fully considered and are persuasive. The 35 USC 102(b) rejection of claim 3 in view of Nakamura has been withdrawn.

Conclusion

15. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

16. Any inquiry concerning this communication or earlier communications from the examiner should be directed to GLORIA R. WEEKS whose telephone number is (571)272-4473. The examiner can normally be reached on M-F 8am-4pm.

⁴ Found to be element 62 of Nakamura, as structurally defined in claim 1.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rinaldi I. Rada can be reached on (571) 272-4467. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Other helpful telephone numbers are listed for applicant's benefit:

- Allowed Files & Publication (888) 786-0101
- Assignment Branch (800) 972-6382
- Certificates of Correction (703) 305-8309
- Fee Questions (571) 272-6400
- Inventor Assistance Center (800) PTO-9199
- Petitions/special Programs (571) 272-3282
- Information Help line 1-800-786-9199

/Gloria R. Weeks/
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July 8, 2008